

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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|--------------------------------------------|---|-------------------------------|
| ALICE SAMPLES |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket Nos. 223,013 & 223,014 |
| THE BOEING COMPANY |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| INSURANCE CO. STATE OF PENNSYLVANIA |) | |
| and KEMPER INSURANCE COMPANIES |) | |
| Insurance Carriers |) | |

ORDER

Claimant appeals from the Award of Administrative Law Judge Jon L. Frobish dated June 23, 2000. In Docket No. 223,014, claimant was granted an 11 percent impairment to the left upper extremity at the shoulder for injuries suffered on May 5, 1997. In Docket No. 223,013, claimant was denied any award for the alleged bilateral carpal tunnel syndrome. The Administrative Law Judge found claimant failed to prove she sustained accidental injury arising out of and in the course of her employment with regard to the carpal tunnel syndrome. Oral argument was held on November 8, 2000.

APPEARANCES

Claimant appeared by her attorney, Joseph Seiwert of Wichita, Kansas. Respondent and Kemper Insurance Companies appeared by their attorney, Richard J. Liby appearing for Vincent A. Burnett of Wichita, Kansas. Respondent and Insurance Company State of Pennsylvania appeared by their attorney, Frederick L. Haag of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

Claimant appeals the nature and extent of the injury and disability alleged in Docket No. 223,014. At oral argument, the parties stipulated that the 11 percent impairment of function to claimant's left upper extremity including the shoulder, in Docket No. 223,014, is not at issue before the Appeals Board. That award is, therefore, affirmed.

Claimant does appeal the issue of the nature and extent of injury and disability for claimant's alleged bilateral carpal tunnel syndrome in Docket No. 223,013. Respondent contends claimant's bilateral carpal tunnel syndrome is not compensable, not having arisen out of and in the course of her employment with respondent. Those are the issues for Appeals Board review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file herein, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed.

Claimant alleges she developed bilateral carpal tunnel syndrome while working for respondent between October 1996 and her last day of work, June 28, 1997. Claimant's contentions are not supported by the medical opinions of Lynn D. Ketchum, M.D., a board certified plastic surgeon who specializes in hand surgery. Dr. Ketchum was claimant's expert in this litigation. However, when Dr. Ketchum examined claimant in August of 1997, he diagnosed capsulitis of the left shoulder with decreased range of motion and a probable triangular fibrocartilage tear in the right wrist. Dr. Ketchum testified that claimant had no symptoms and no complaints associated with bilateral carpal tunnel syndrome at that time. That examination, which occurred almost two months after claimant last worked for respondent, defeats claimant's allegations of work-related bilateral carpal tunnel syndrome.

J. Mark Melhorn, M.D., first began treating claimant in 1986 when she first suffered upper extremity injuries while working for respondent. He later examined and treated claimant beginning in November 1996, ultimately performing bilateral carpal tunnel surgeries on claimant. The surgery on the right wrist occurred February 9, 1998, with the surgery on the left wrist occurring on April 20, 1998. However, when Dr. Melhorn examined claimant in December of 1996, he did not diagnose carpal tunnel syndrome. EMG nerve conduction studies performed at that time were normal.

When claimant returned to Dr. Melhorn in December 1997, EMG nerve conduction studies were abnormal. Dr. Melhorn, after considering the change in the nerve conduction studies and after reviewing the medical opinion of Dr. Ketchum, opined that, in his opinion, claimant's onset of symptoms with regard to the clinical diagnosis of carpal tunnel syndrome occurred after claimant's examination in August 1997. As claimant last worked for

respondent on June 28, 1997, this would eliminate any causal connection between claimant's employment and the development of carpal tunnel syndrome.

The Board is not unmindful of the complaints claimant alleges began in October 1996. However, in workers' compensation litigation, it is claimant's burden to prove her entitlement to the benefits requested by a preponderance of the credible evidence. K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g). Here, the medical opinions of Dr. Melhorn and Dr. Ketchum contradict claimant's allegations of developing bilateral carpal tunnel syndrome while employed with respondent. The Appeals Board finds those medical opinions to be persuasive. Therefore, the decision by the Administrative Law Judge to deny claimant compensation for the bilateral carpal tunnel syndrome is affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated June 23, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Frederick L. Haag, Wichita, KS
Vincent A. Burnett, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director